

In the Matter of)	
)	
Implementation of the Subscriber Carrier)	
Selection Changes Provisions of the)	
Telecommunications Act of 1996)	CC Docket No. 94-129
)	
Policies and Rules Concerning)	
Unauthorized Changes of Consumers')	
Long Distance Carriers)	

INITIAL COMMENTS OF TALK AMERICA INC.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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I. Introduction

In its Second Further Notice of Proposed Rulemaking ("SFNPR") adopted February 28, 2003, the FCC requested comment on whether additional minimum requirements should be adopted for third party verification calls "in order to maximize their accuracy and efficiency for consumers, carriers, and the Commission."¹ The SFNPR identified seven potential additional requirements for comment: (1) whether third party verifiers should state the date during the taped verification process; (2) whether the verifier should explicitly state that if the customer has additional questions regarding the carrier change after verification has begun, the verification will be terminated and further verification suspended until after the customer has spoken to the sales representative; (3) whether the verifier should tell the customer that once verification has been completed, the carrier change can be effectuated without further contact with the customer; (4)

¹ *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers'*

whether the verifier should be required to state to a customer that he or she is verifying a carrier change, not an intention for the customer to retain their existing service; (5) whether each piece of information that a verifier must gather under the rules should be the subject of a separate and distinct verifier inquiry and subscriber response; (6) whether the verifier should specify that interLATA service encompasses both international and state-to-state calls; and (7) whether a verifier should define the terms “intraLATA toll” and “interLATA toll” service.

At the outset, Talk America notes that its Third-Party Verification (“TPV”) scripts already incorporate most of the additional items proposed in the SFNPR . As a Competitive Local Exchange Carrier (“CLEC”) with the residential mass market as its primary target, Talk America employs mass market sales channels coupled with third-party verification extensively for its local and long distance sales. Talk America currently serves more than 400,000 bundled local access lines, about 90% of which are residential, and approximately 350,000 long distance-only accounts. The vast majority of the Company’s sales are verified through taped third-party verification, as opposed to other methods of verification available under the FCC rules. Accordingly, the Company has extensive experience with third-party verification processes, as well as issues that arise when using this form of verification.

Based on this experience, Talk America has developed TPV scripts that fulfill all of the requirements of the existing FCC and specific state commission rules, as well as most of the additional requirements proposed in the SFNPR. Talk America has honed its TPV scripts over time, to ensure that they are clear and concise and that they fully inform

Long Distance Carriers, CC Docket No. 94-129, FCC 03-42, Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, ¶ 111 (rel. Mar. 17, 2003) (“SFNPR”).

customers that they are agreeing to switch a specific service or services to Talk America. Competitive carriers such as Talk America, who seek to establish a long-term presence in the telecommunications industry by developing a stable base of local and/or long distance customers have nothing to gain and everything to lose by attempting to mislead consumers by switching their service without their complete and fully informed authorization.

Talk America nevertheless recognizes the need to protect consumers from unauthorized carrier switches, and that the information provided through third-party verification is a critical component of that protection. In evaluating the need to mandate additional minimum requirements for TPV scripts, however, Talk America urges the Commission to also be mindful of the competitive implications of such requirements. Excessively lengthy and/or redundant TPV scripts that attempt to impart complex information to a prospective customer can create customer confusion and dissatisfaction, resulting in either a more costly sales process (e.g., due to the added length of the verification calls and/or more call transfers back to the sales representative to clarify issues raised during TPV), or loss of the sale entirely. Such results may have a devastating effect on the development of competition, particularly in the residential local exchange markets, where competitors already face significant obstacles when trying to attract customers away from the dominant incumbent LECs. These obstacles should not be compounded by adding onerous and /or confusing TPV script requirements that further discourage customers from taking the actions necessary to try a competitor's service.

This is not to suggest that competition should be promoted at the expense of slamming protections. Rather, Talk America believes these two objectives must be carefully balanced such that consumers are afforded protection from unauthorized carrier switches, while legitimate competitors are not unduly constrained in their efforts to obtain customers.

II. Talk America Sales/Verification Processes

By way of background, Talk America's sales process involves multiple steps, each of which are carefully scripted to ensure legal and regulatory compliance. These steps are designed to fully inform customers about the services and prices the Company is offering to them and to obtain proof of authorization that can be readily retrieved and produced in the event that an inquiry or complaint is subsequently received regarding the sale.

In the first step, the sales presentation is made, via an outbound telemarketing sales contact, response to an inbound inquiry prompted by a television advertisement or a direct mail piece, or through other sales methods. All sales materials, including the scripts used by outbound and inbound sales representatives, are thoroughly reviewed by Talk America's regulatory department to ensure that they satisfy all requirements. The sales scripts always clearly identify the Company's name and describe in detail the terms, conditions, and prices of the services offered.

If the customer decides to proceed with the sale, the second step involves "pre-verification" of the sale. In this step, the sales representative reads the customer a scripted summary of the service plan(s) selected, which again details the service(s) included, the full price for the service(s) (including an estimate of taxes and surcharges), and terms and

conditions associated with the service(s). The sales representatives must read the pre-verification scripts verbatim, or they are subject to disciplinary action.

In the third step, the sales representative transfers the customer to the independent third-party verification agent, provides that agent with the representative's identification and a code that identifies the plan sold, and then turns the customer over to the third-party verifier for verification. The third-party verifier confirms the sale using a TPV script that contains all of the elements required in FCC and state commission rules, as well as much of the additional information proposed in the SFNPR. Specifically, the script includes the following information:

- (1) The name of the third-party verification agent company and the representative who is verifying the sale;
- (2) That the purpose of the call is to confirm the customer's order for the purchase of telecommunications service(s) from Talk America;
- (3) The current date;
- (4) Confirmation of each telephone number the customer wants to be switched to Talk America;
- (5) Confirmation that the customer is over 18 years of age and has authority to make decisions concerning the telephone service(s) to be switched;
- (6) For each service to be switched (local, regional (intraLATA) toll, and interLATA toll) separate confirmation that the customer is giving approval to switch that service to Talk America;
- (7) A request for the customer's date of birth to verify the age and for identification purposes;

(8) A request for the customer to spell his or her first and last name, to ensure accurate identification;

(9) A statement that the customer has selected services that are provided by Talk America Inc., indicating approximately when the customer can expect the actual switch in service(s) to take place, and providing the Company's website name and a toll free number for all other terms and conditions of service and program details;

(10) A statement indicating that the verification process to confirm the customer's order for Talk America's telephone service(s) is complete.

The TPV script also includes a rebuttal for the verifier, which is to be read in the event the customer begins to ask questions about the service. The rebuttal informs the customer that he or she is speaking to a third-party verification agent and that in order to obtain any additional details about the service, the customer must call Talk America's toll free number or visit its website (the number and web address are provided by the verifier). The verifier then asks the customer if they wish to proceed with verification; if the customer indicates that they still have questions, the verifier is instructed to inform the customer that they cannot complete the verification and to provide Talk's toll free number for any further inquiries.

If the verification is completed, the tape of the verification is immediately loaded into Talk America's proprietary Order Processing System, where it is available as a .WAV file for instant retrieval. The order then proceeds to the next step in the sales/provisioning process and the customer's telephone number(s) stated in the TPV is checked against the information contained in the customer's Customer Service Record. If the information matches, the order is processed automatically; if not, the order drops out

of the automated system and is handled manually by a provisioning representative to determine why the information did not match (e.g., the customer may have provided an incorrect telephone number). Once an order completes, a customer welcome letter is automatically sent informing the customer that his or her telephone service(s) has been switched to Talk America.

After considerable honing and refinement over the years, Talk America believes that its TPV scripts fully satisfy the Commission's desire to maximize the accuracy and efficiency of the verifications for consumers, the Commission, and the Company. As discussed more fully in the sections that follow, Talk America is concerned that some of the proposed script additions suggested in the SFNPR may have the unintended opposite effect of reducing efficiency and creating customer confusion and dissatisfaction. The impact on Talk America and other carriers would be increased costs, reduced sales, and increased confusion among potential customers.

III. Response to Specific Proposed TPV Script Additions

A. Should the third party verifier state the date during the taped verification process?

As outlined above, Talk America's TPV scripts require the verifier to state the current date. Talk America has found this information to be valuable in identifying the exact date the sale occurred, which is useful for various nonregulatory purposes, as well as for the regulatory issue raised in the SFNPR. Talk America does not have any objection to this requirement being added to the Commission's rules.

B. Should the verifier explicitly state that if the customer has additional questions regarding the carrier change after verification has begun, the verification

will be terminated and further verification suspended until after the customer has spoken to the sales representative?

Talk America's TPV scripts currently include this information as a "rebuttal" for the third-party to use in the event the customer begins to ask questions about the terms, conditions, price, or other details of the service or the Company. The FCC's rules already prohibit third-party verifiers from providing additional information beyond that required for verification (see 47 C.F.R § 64.1120(c)(3)(iii)), and Talk America does not believe that any additional rules are required in this regard. In particular, the Company urges the Commission to not impose a rule mandating this statement as a preamble to the verification script. This would simply add to the length of the script (and thus the cost per verification) and would likely confuse/irritate customers and thereby increase customer drop offs during verification, which would in turn increase the cost per sale, with no real offsetting benefit. If the Commission nevertheless believes that additional language is necessary to clarify its existing rule on this issue, Talk America recommends that the language only require such a statement to be as a rebuttal in the event the customer asks the verifier substantive questions regarding issues that are beyond the scope of the verification.

C. Should the verifier tell the customer that once verification has been completed, the carrier change can be effectuated without further contact with the customer?

Talk America's current TPV script informs the customer at the conclusion of a successful verification that the verification is complete and indicates approximately when the customer's service(s) will be switched. This information makes it clear to the

customer who has responded affirmatively to the verification questions and has concluded the verification process that the switch will take place without further contact. Talk America does not believe that an additional requirement is needed in this area, and is concerned that such a requirement could have the unintended effects of increasing the length and reducing the efficiency of the TPV, thereby increasing customer drop offs to the detriment of competition, again without measurable offsetting benefits.

The SPNPR suggests that such a rule may be needed because “we have found that customers may not realize that a carrier cannot in most cases ‘undo’ a PIC change after it has been submitted, even if the subscriber quickly requests cancellation of the change order.”² However, the situation described is not always the case—in some instances, it is possible to cancel an order after it has been verified, particularly if a carrier delays the order for a few days after verification to ensure that the customer receives all of the information needed to use their service and features prior to the switch taking place or a delay occurs for other reasons. Moreover, even if it is not always possible now to cancel an order after it is verified and before the switch occurs, future system improvements may change that situation and permit such cancellations.

The FCC should not adopt a generic and static rule applicable across-the-board, in an effort to “fix” a problem that may be temporary and that does not exist across-the-board. If the Commission nevertheless determines that a more specific requirement is needed in this regard, it should not require the statement as a preamble to the TPV script, but should permit the verifier to inform the customer at the end of the verification that the changes may be processed with no further contact. Even at that stage of the verification,

² *Id.* at ¶ 112.

if the customer raises concerns about the switch, the verification would be voided and the customer referred back to the Company for more information.

D. Should the verifier be required to state to a customer that he or she is verifying a carrier change, not an intention for the customer to retain their existing service?

Talk America believes that if a carrier complies with the existing TPV rules, it will be clear to customers that they are verifying a change in their service to a new carrier, not retention of their existing service. Accordingly, no additional rules are required in this area. For instance, Talk America's TPV scripts state at least three different times (in the introduction, in the questions verifying the switch of each service requested, and at the end of the TPV) that the customer is agreeing to switch service(s) provided by their existing carrier(s) to service(s) provided by Talk America. To require the addition of another sentence to the script to inform the customer that they are verifying their intention to switch their service(s) to Talk America rather than retain the service(s) of their existing carrier(s) would be redundant and potentially confusing to the customer. It would also add to the length of the script, increasing the cost per sale and resulting in increased customer drop offs, to the detriment of competition.

The reason offered for this proposal in the SNPRM is that "we have observed instances in which, for example, carriers seeking to obtain customer authorization for a carrier change merely inform customers that they are consenting to an 'upgrade' of the customers' service or to bill consolidation."³ Talk America would submit that such verifications are invalid, and that the carriers using them are not adhering to the letter or spirit of the existing FCC rules. There is no need to try to "correct" this problem by imposing further script requirements on such carriers (who are unlikely to adhere the new

³ *Id.* at ¶ 113.

rules either), as well as on carriers who abide by the current rules and have not created the situation described.

E. Should each piece of information that a verifier must gather under the rules be the subject of a separate and distinct verifier inquiry and subscriber response?

Section 64.1120(b) of the Commission's rules requires carriers to obtain separate authorization from the subscriber for each service sold. Talk America's TPV scripts comply with this requirement by soliciting separate responses from the customer for each service that is to be switched, which may include local, regional (intraLATA) toll, and/or interLATA toll. The other information required in the TPV (identity of the subscriber, whether the person is authorized to make the switch, and telephone numbers to be switched) is also subject to separate and distinct inquiries. Talk America does not fully understand the Commission's concern in this area, but agrees that where a distinct response is required to gather the necessary information, the TPV script should require such distinct responses. At this point, however, Talk America does not believe that additional rules are required in this area.

F. Should the verifier specify that interLATA service encompasses both international and state-to-state calls?

Talk America's verification scripts already describe interLATA services as including international and interstate calls (along with instate interLATA calls). If the Commission has found that some carriers fail to provide that information to customers, Talk America does not object to a rule addition that would explicitly impose this requirement, as it assists the customer in understanding which services are being switched.

G. Should the verifier define the terms “intraLATA toll” and “interLATA toll” service?

Talk America’s TPV scripts currently “define” these terms by referring to intraLATA toll as “regional toll” service, a term commonly used in the industry, but noting parenthetically that such service is sometimes called “intraLATA toll,” and by defining interLATA toll as intrastate interLATA, interstate, and international toll services. The Company believes that this provides customers with a sufficient description of the services they are agreeing to switch, and that the rules should not be modified to require verifiers to offer a more detailed description of these “industry” terms. If the customer raises questions about the scope of the services in questions, the verifier should refer them back to the carrier for more information and the verification should be terminated. While Talk America would not object to the Commission requiring that all carriers use the same terminology to identify these services in their TPV scripts, any additional rules should not require verifiers to further define these terms, as the result would likely be greater customer confusion and questions which the verifier could not answer. The issues underlying the consumer complaints concerning intraLATA toll service cited in the SFNPR will not be solved through the third-party verifications process. Rather, such complaints reflect possible deficiencies in a carrier’s sales process, where carriers should clearly explain the scope of their calling plans. The FCC rules should not attempt to solve this issue by burdening the third-party verification process with additional requirements that are unlikely to allay customer confusion on this issue.

Respectfully submitted,

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